

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

In re:

ROBERT MICHAEL ARDIS,  
  
Debtor.

CASE NO.: 16-30618-KKS  
CHAPTER: 13

**ORDER DENYING DEBTOR'S VERIFIED AMENDED MOTION FOR  
DISQUALIFICATION OR RECUSAL [OF] FEDERAL BANKRUPTCY  
COURT [SIC] JUDGE (DOC. 124)**

THIS MATTER is before the Court on the self-represented Debtor's *Verified Amended Motion for Disqualification or Recusal [of] Federal Bankruptcy Court [Sic] Judge* filed on October 24, 2016 (the "Recusal Motion," Doc. 124). By the Recusal Motion, the Debtor demands that the undersigned recuse because of an adverse ruling delivered at a hearing on October 18, 2016.<sup>1</sup> For the reasons set forth below, the Recusal Motion should, and will, be denied.

**Facts and Procedural History**

The Debtor, previously employed for many years as a college professor, is self-represented.<sup>2</sup> He filed the petition commencing this case on June 29, 2016. The

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<sup>1</sup> The Debtor also requests that I disqualify the attorney for the Chapter 13 Trustee and that I order the court reporter to provide him with a transcript of the October 18, 2016 hearing. Nothing in the Bankruptcy Code, Bankruptcy Rules, or this Court's Local Rules requires or even permits this Court to order the court reporter to send the Debtor a transcript. *See*, N.D. Fla. LBR 5007-1.

<sup>2</sup> The Debtor's papers show that he has been applying for new employment in a university or college. It is possible that he is already so employed, but because the Debtor has not filed pay advices the only evidence of employment is the Debtor's testimony at the hearing and information gleaned from his Schedules.

Chapter 13 Trustee filed a motion to dismiss this case with prejudice on August 17, 2016, alleging that the Debtor had failed to comply with Chapter 13 requirements, including that the Debtor had not yet made any plan payments.<sup>3</sup> A preliminary hearing on the Trustee's Motion to Dismiss was held on September 28, 2016. The Debtor appeared at that hearing, as did the Chapter 13 Trustee.

At the preliminary hearing the Court made it abundantly clear what the Debtor needed to do in order to prevent dismissal of this case. Addressing the Debtor directly, the Court stated:

I think you and [I] have had this discussion before also, in order for a bankruptcy court, including myself, to give debtors what they want, the debtors [sic] have to follow the rules. You have to provide the tax return to the Chapter 13 Trustee. You have to file the plan in proper form. You have to start making plan payments when they are due, et cetera, et cetera. And, Mr. Ardis, I have bent over backwards so far for you in this case and in your prior case because I can only imagine what it feels like to be losing a home.<sup>4</sup>

After that, the following exchange occurred between the Chapter 13 Trustee (Ms. Hart), the Debtor and the Court:

Ms. Hart: Your Honor, the only thing I wanted to point out to Mr. Ardis was he's required, notwithstanding that these [hearings] are continued, to make his plan payments, and he's already missed his July, August, September [plan payments], and we are coming up on this month again.

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<sup>3</sup> Chapter 13 Trustee's Amended Motion to Dismiss with Prejudice (the "Trustee's Motion to Dismiss," Doc. 100).

<sup>4</sup> September 28, 2016 Hearing Tr. 25:7-19.

The Court: Mr. Ardis, Ms. Hart has reminded you that you are already due to make payments for July, August – is it September also, Ms. Hart?

Ms. Hart: Yes, Your Honor.

The Court: -- and September under the Chapter 13 Bankruptcy Code requirements and this Court's court order.

Debtor Ardis: Do I need to send those [payments] to Ms. Hart?

The Court: You better do something, yes, sir. And you will find her information on the court docket as to where to send those payments. Is that correct, Ms. Hart?

Ms. Hart: Yes, that's correct, Your Honor. And we also send out to every debtor when they first file a letter telling you exactly where the payments go. But I will be happy to send another one, if you would like me to.

The Court: Ms. Hart's office will send you another letter giving you the exact address of where to send those payments.<sup>5</sup>

At the same hearing, the Court reminded the Debtor of the Duties of the Debtor Order and its requirements:

[T]here is an order entered in every Chapter 13 case in this district. We call it the duties of the debtor order. There is one that was entered in your case. And among other things, that is the order that requires you to give the Trustee two years' worth of tax returns pre-petition and to start making your payments on time and to file a plan in a proper form. And so the Trustee has correctly alleged in her motion to dismiss with prejudice that you have not

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<sup>5</sup> *Id.* at 27:6 – 28:7.

complied with the requirements of that order. So I urge you to look at that order again.<sup>6</sup>

The day after the preliminary hearing, the Trustee filed a notice containing the address to which the Debtor should send his plan payments.<sup>7</sup> At the conclusion of the preliminary hearing, the Court announced that the final hearing would take place on October 18, 2016.<sup>8</sup>

The evidence presented at the final hearing included testimony by the Debtor. The unrefuted evidence showed that this is the Debtor's third Chapter 13 case since March of 2015, that the Debtor has not made any plan payments in this case or his two prior cases, and that the Debtor has not filed income tax returns for at least 2014 and 2015.<sup>9</sup> In short, the evidence showed that the Debtor was still not in compliance with the Bankruptcy Code, this Court's Standing Chapter 13 Order, or the Duties of the Debtor Order.<sup>10</sup>

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<sup>6</sup> *Id.* at 28:19 – 29:5.

<sup>7</sup> *Notice of Filing Chapter 13 Plan Payment Address and Information* (Doc. 92).

<sup>8</sup> Several matters were noticed to be heard on October 18, 2016, including the final hearing on the Trustee's Motion to Dismiss. Other matters heard on that date include: *Order to Show Cause Why Case should not be Dismissed for Debtor's Failure to Comply with Requirements of Section 521 of the Bankruptcy Code* (Doc. 54); *Debtor's Emergency Motion for Immediate Relief* (Doc. 103); *Debtor's Supplemental Emergency Motion for Immediate Relief* (Doc. 113); *Debtor's Emergency Motion to Cancel and/or Emergency Motion to Continue Hearing* (Doc. 117); and *Debtor's Emergency Objection to Trustee's Statement of Undisputed Facts* (Doc. 116). The Debtor filed the latter two motions the day before the hearing.

<sup>9</sup> The Debtor filed Case No. 15-30264 on March 12, 2015. That case was dismissed on May 27, 2015. The Debtor then filed Case No. 16-30061 on January 25, 2016. That case was dismissed on May 16, 2016. The Proof of Claim filed by the Internal Revenue Service appears to indicate that the Debtor has also not filed a return for 2012. (Claim No. 1-1.)

<sup>10</sup> 11 U.S.C. §§ 521(a), 1308(a), 1326(a); Standing Order #19; Doc. 42.

Failure to make Chapter 13 plan payments constitutes a violation of Section 1326(a) of the Bankruptcy Code as well as the “Duties of the Debtor Order” entered in all Chapter 13 cases filed in this District, including this case and each of the Debtor’s prior two cases.<sup>11</sup> Among other things, the Duties of the Debtor Order, provides:

(b) The Debtor shall commence making payments to the Trustee as proposed by the plan or any amended plan within 30 days after the petition date unless otherwise ordered by the Court. **If the Trustee does not timely receive any payments, the case may be dismissed.**<sup>12</sup>

The Debtor admitted at the final hearing that he did not make a single payment to the Chapter 13 Trustee in his prior two cases. By the final hearing on October 18, 2016, the Debtor still had not made a single plan payment in this case, despite his testimony that as of the hearing date he had more than \$1,000 in cash and \$1,700 in the bank. Also at the final hearing the Debtor testified that he has not made a mortgage payment on his home since 2012, and admitted that he has not filed 2014 or 2015 income tax returns.<sup>13</sup> The Debtor testified that he had filed pay advices with the Court in this case, but no record of any pay advices appears on the docket.<sup>14</sup>

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<sup>11</sup> Doc. 42 in the instant case; Case No.: 16-30061, Doc. 19; Case No.: 15-30264, Doc. 19.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> The Debtor’s most recent Chapter 13 Plan provides for payments to the Chapter 13 Trustee of \$677.84, per month. The total due from the Debtor to the Trustee as of the date of the hearing, based on the payments set forth in the Debtor’s Amended Chapter 13 Plan, was \$2,033.52.

<sup>14</sup> In a footnote on each paper he has filed in this Case, the Debtor asserts that when a party is unrepresented his pleadings must be liberally construed. *See, e.g.*, Recusal Motion, pp. 1-2. While that may be true in some respects, that premise does not relieve a party from properly pursuing relief in this Court. On this Court’s website, under the “Filing Requirements” tab, there is a link to a page entitled: “Filing Without An

The Debtor asserts that I must recuse because I ruled against him at the final hearing. He alleges that at one point I appeared inclined to rule in his favor, but because I ultimately ruled for the Chapter 13 Trustee I am prejudiced or biased against him and in favor of the Trustee.<sup>15</sup> Neither the facts nor the law the Debtor cites support recusal.

### Discussion

The Debtor cites 28 U.S.C. §§ 144 and 455 in support of the Recusal Motion.

### 28 U.S.C. § 144

The Debtor seeks recusal under 28 U.S.C. § 144. That statute does not apply in bankruptcy cases.<sup>16</sup> “By its express terms, § 144 applies only to proceedings ‘in a district court’ and is inapplicable to proceedings before a bankruptcy judge.”<sup>17</sup>

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Attorney.” That page states in part: “Pro se debtors must comply with the Local Bankruptcy Rules for the Northern District of Florida (N.D. Fla. L.R.), Title 11 of the U.S. Code (11 U.S.C. or “the Bankruptcy Code”) and the Federal Rules of Bankruptcy Procedure (Fed. R. Bankr. P.) just as if they were represented by an attorney. Failure to do so can result in dismissal of the case or other sanctions.” (<http://www.flnb.uscourts.gov/filing-requirements/filing-without-attorney>.)

<sup>15</sup> The Debtor actually complains that I am biased in favor of the attorney for the Chapter 13 Trustee, since the attorney, and not the Trustee, appeared at the hearing and argued the Trustee’s Motion to Dismiss.

<sup>16</sup> Section 144 of United States Code Chapter 28, provides, in pertinent part:

Whenever a party to any proceeding *in a district court* makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. (Emphasis added.)

<sup>17</sup> *In re Sanders*, 540 B.R. 911, 918 (Bankr. S.D. Fla. 2015) (citing *Dubnoff v. Goldstein*, 385 F.2d 717, 720 (2d Cir. 1967); *Ginger v. Cohn*, 255 F.2d 99 (6th Cir. 1958); *Seidel v. Durkin*, 194 B.R. 214, 221 (9th Cir. BAP 1996)).

28 U.S.C. § 455 (a) and (b)

Title 28, Section 455(a) pertains to the appearance of bias. This subsection requires a judge of the United States to disqualify herself in any proceeding in which her “impartiality might reasonably be questioned.”<sup>18</sup> In the Eleventh Circuit, under Section 455(a) “the standard is whether an objective, fully informed lay observer would entertain significant doubt about the judge’s impartiality.”<sup>19</sup> “[W]hat matters is not the reality of bias or prejudice but its appearance.”<sup>20</sup>

Section 455(b)(1) of Title 28 pertains to actual bias. This subsection mandates recusal when a judge “has a personal bias or prejudice concerning a party....”<sup>21</sup> As with Section 455(a), the standard for finding actual bias under Section 455(b)(1) is an objective one.<sup>22</sup> The Debtor claims actual bias is demonstrated because before ruling against him I asked whether the Trustee was willing to give him another chance. He claims that after the Trustee answered “no,” I “abdicated [my] decision making to the Chapter 13 Trustee.”<sup>23</sup>

The events at the October 18 hearing do not demonstrate actual, or the appearance of, bias or prejudice. In fact, the Docket and evidence reflect the

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<sup>18</sup> 28 U.S.C. § 455(a).

<sup>19</sup> *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000).

<sup>20</sup> *Liteky v. United States*, 510 U.S. 540, 548 (1994).

<sup>21</sup> 28 U.S.C. § 455(b)(1).

<sup>22</sup> *In re Sanders*, 540 B.R. 911, 919 (Bankr. S.D. Fla. 2015).

<sup>23</sup> Recusal Motion (Doc. 124, p. 7).

opposite. For example, before the Debtor filed the petition commencing this case the state court had conducted a foreclosure sale of the Debtor's homestead and issued a certificate of title. As a result, the Debtor's homestead never became property of the estate.<sup>24</sup> In spite of that, the Court gave the Debtor an opportunity to engage in Mortgage Modification Mediation.<sup>25</sup>

The facts presented at the final hearing, especially coupled with the dockets in the Debtor's last two Chapter 13 cases, proved beyond any doubt that the Debtor remained in violation of several Chapter 13 requirements and had made no effort to pay his creditors. Under these facts, even a fully informed lay observer would not question the undersigned's impartiality. There is no actual or appearance of bias here.

Recusal is not warranted or proper under Section 455(a) or 455(b). "[A]dverse rulings alone do not provide a party with a basis for holding that the court's impartiality is in doubt."<sup>26</sup> The Debtor has consistently, in this case and his last two, failed to abide by the Bankruptcy Code, Bankruptcy Rules, this Court's orders and Chapter 13 procedures. Nothing at the October 18 hearing showed any

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<sup>24</sup> 11 U.S.C. § 541.

<sup>25</sup> The Court noted this fact in its order granting the Debtor's Motion for Mortgage Modification Mediation, but ordered mediation anyway on the basis that a formal mediation could result in the mortgagee voluntarily agreeing to modify the mortgage even though the property is not property of the estate.

<sup>26</sup> *Byrne v. Nezhat*, 261 F.3d 1075, 1103 (11th Cir. 2001).



bias against the Debtor or his family.<sup>27</sup> On the contrary, what was clearly shown at the hearing was that the Debtor continues to seek relief under the Bankruptcy Code without having to play by the rules; he continues to live in his home without making any payments; he continues to demand Chapter 13 relief from his creditors, but he continues to defy the requirements of Chapter 13.

*In re Kondos*

At the hearing, the Debtor requested the same treatment as was afforded to another debtor in a Chapter 13 case in this Court. In *In re Kondos*, the Chapter 13 Trustee's motion to dismiss was denied with conditions.<sup>28</sup>

The facts here are completely dissimilar. In *Kondos*, the Chapter 13 debtor was in compliance with the Bankruptcy Code and Rules, this Court's Chapter 13 Standing Order and the Duties of the Debtor Order, but for his failure to provide the Chapter 13 Trustee one of his income tax returns. The debtor had not filed any prior bankruptcy cases, had filed all required documents, and had made Chapter 13 plan payments totaling over \$3,800.<sup>29</sup> The Trustee had not moved to dismiss the *Kondos* case with prejudice, and in fact did not have grounds on which to do so.

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<sup>27</sup> It can hardly be said that the undersigned has evidenced any bias or prejudice against the Debtor's family, since no member of the Debtor's family has ever appeared before this Court.

<sup>28</sup> *In re Kondos*, Case No.: 15-31207-KKS.

<sup>29</sup> The debtor in *Kondos* had not had any other bankruptcy case pending within the previous eight years.

Without question, recusal is a matter to be taken very seriously. “An independent and honorable judiciary is indispensable to justice in our society.”<sup>30</sup> At the same time, “there is as much obligation for a judge not to recuse when there is no occasion for h[er] to do so as there is for h[er] to do so when there is.”<sup>31</sup> A party may not obtain a judge’s recusal merely because the judge ruled against him. Displeasure with a particular ruling or outcome cannot and does not form the proper basis for recusal. If it did, our entire American justice system would come to a grinding halt.

### Conclusion

Throughout this case the Debtor’s stated goal has been to save his homestead. For that reason, and as the Debtor alleges, at the conclusion of the final hearing, I did, indeed, hesitate before ruling. I did, indeed, pause to reflect. In the end, after weighing all of the evidence, I ruled that the Chapter 13 Trustee’s Motion to Dismiss would be granted. The Debtor does not like my ruling. He is upset with the situation in which he finds himself. Even though he has made no mortgage payments since 2012, no Chapter 13 plan payments, and has not complied with many Chapter 13 requirements, he blames the system, the attorney for the Chapter 13 Trustee, and now the Court.

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<sup>30</sup> 2 GUIDE TO JUDICIARY POLICY, pt. A, ch. 2: *Code of Conduct for United States Judges*, at Canon 1.

<sup>31</sup> *In re Moody*, 755 F.3d 891, 895 (11th Cir. 2014) (quoting *United States v. Burger*, 964 F.2d 1065, 1070 (10th Cir. 1992)).

A judge should not recuse based on unsupported, irrational, or highly tenuous speculation.<sup>32</sup> The Debtor's allegations in support of recusal are all of those.

For the reasons stated, it is

ORDERED:

1. The Debtor's *Verified Amended Motion for Disqualification or Recusal [of] Federal Bankruptcy Judge* (Doc. 124) is DENIED.
2. The Debtor's request that I disqualify the attorney for the Chapter 13 Trustee is DENIED.
3. The Debtor's request that I order the court reporter to prepare and provide a transcript of the October 18, 2016 hearing to the Debtor is DENIED.

DONE AND ORDERED on November 8, 2016.



KAREN K. SPECIE  
United States Bankruptcy Judge

cc: All interested parties

Robert Michael Ardis  
4133 Aqua Vista Drive  
Pensacola, FL 32504

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<sup>32</sup> *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986).